IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 293 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJUBHAI SHIVABHAI PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR DR BHATT for Applicant(s) : 1,
DELETED for Respondent(s) : 1,
MR AM PAREKH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 18/10/2007

ORAL JUDGMENT

The petitioner herein has challenged an order dated 30th August 1999 passed below Ex.21 by the JMFC, Prantij in Criminal Case No.1450 of 1993. The

petitioner has also challenged the order dated 31st January 2000 passed by the learned Additional Sessions Judge in Criminal Revision Application No.69 of 1999.

2. The petitioner is the original accused against whom a criminal complaint came to be filed by respondent No.2 herein for dishonour of cheque alleging commission of offence under section 138 of the Negotiable Instruments Act. The petitioner had issued a cheque of Rs.35,000/- to respondent No.2 on 18.5.93. It appears that the cheque was presented by respondent No.2 for realization. However, the same bounced. He, therefore, issued a notice under section 138 of the Negotiable Instruments Act on 22nd June 1993 and another notice on 3rd July 1993. It is the case of respondent No.2 that, however, on account of the representation of the petitioner, he did not carry any further process. However, since the petitioner did not fulfill his last commitment to pay the amount by 5.11.93, a fresh notice was issued on 29.11.93 which was received by the petitioner on 3rd December 1993 and the complaint was thereafter lodged on 23.12.93.

3. The petitioner applied to the learned Magistrate for dismissing the complaint contending that the complaint was not filed within the time permitted under the law. His application, however, came to be rejected by the impugned order passed by the learned Magistrate and his revision application

was also rejected by the Sessions Court.

4. The present petition is sought to be maintained on the limited ground that as per the provisions contained in section 138 read with section 142 of the Negotiable Instrument Act, once a notice is issued by the drawee of the cheque, complaint has to be lodged within a period of one month after permitting a period of 15 days to the drawer of the cheque to make the payment of the amount involved. It is contended that once such a notice has been issued, limitation period would begin to run and if no complaint is filed within the period of limitation prescribed under law, fresh notice would not save the limitation or revive the cause of action.

5. The issue arising in the present petition is no longer *res integra.* In the case of **Sadanandan Bhadran v. Madhanvan Sunil Kumar**, AIR 1998 SC 3043, the Apex Court laid down the law in following terms:

> “He may, therefore, without taking pre-emptory action in exercise of his such right under clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under clause (b) of Section 138 he forfeits such right, for, in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the case of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of receipt

of the notice by the drawer, expires."

6. In view of the above decision, I find that the petitioner is justified in contending that the complaint was belated. The Courts below, therefore, erred in rejecting the application of the petitioner.

7. In the result, the petition is allowed. Criminal Case No.1450 of 1993 of the Court of JMFC, Prantij is quashed. Rule is made absolute accordingly.

(Akil Kureshi, J.)

(vjn)